

# China Tax & Investment News



## *Clarification on Certain Administrative Issues under the New Corporate Income Tax Law*

### **BACKGROUND**

The new Corporate Income Tax Law (the “CITL”) and the CITL Implementation Regulations (the “CITLIR”), which came into effect 1 January 2008, brought an end to quite a number of preferential tax policies available under the old law. The State Administration of Taxation (the “SAT”) issued a circular Guoshuifa [2008] No. 23 (hereinafter referred to as “Circular 23”) on 27 February 2008 to clarify a few timing and cut off issues relating to the cessation of re-investment tax refund, withholding tax on interest and royalties, and tax holidays previously enjoyed by foreign investment enterprises (“FIEs”) and foreign enterprises (“FEs”).

This issue of the China Tax & Investment News describes these administrative issues and analyses their potential impact on enterprises.

### **ADMINISTRATIVE ISSUES CLARIFIED**

Circular 23 clarifies the following administrative issues in relation to FIEs and FEs:


#### 1. Re-investment tax refund

If foreign investors completed all the relevant re-investment procedures, including alteration/registration with the State Administration of Industry and Commerce, before the end of 2007, they are eligible for reinvestment tax refund in accordance with the old CITL and relevant regulations.

However, if the reinvestment was completed before the end of 2007 through distribution of the 2007 interim profits, no reinvestment tax refund will be accorded to the foreign investors.

#### 2. Exemption of withholding tax on interest and royalties

If technology transfer agreements and loan agreements entered into by FEs with Chinese parties were signed before the end of 2007, and the relevant terms of the agreements fulfill the tax exemption requirements according to the old CITL, withholding tax exemption will continue until the expiry of the agreements, but not including extension, or expansion of, or supplements to such agreements.

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3. The qualified existing FIEs enjoying tax holidays but failing to sustain eligibility due to operational changes after 2008

For the qualified existing FIEs enjoying tax holidays based on the old CITL for the FIEs and FEs, if the operational nature or the tenure of operation of the FIEs changes after 2008 and no longer fulfills the eligibility requirements, the CIT previously exempted or reduced during the tax holidays (including CIT exempted or reduced during the transitional periods, if applicable) shall be clawed back.

### **POTENTIAL IMPACT**

Circular 23 not only straightens out the above timing and cut off issues, but also clarifies the tax authorities' position regarding the legal requirement of ceasing the application of the old preferential tax policies. Taxpayers should review the nature and tenure of operation of their FIEs as well as the terms of the existing technology transfer agreements and loan agreements to ascertain eligibility to previous benefits.

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